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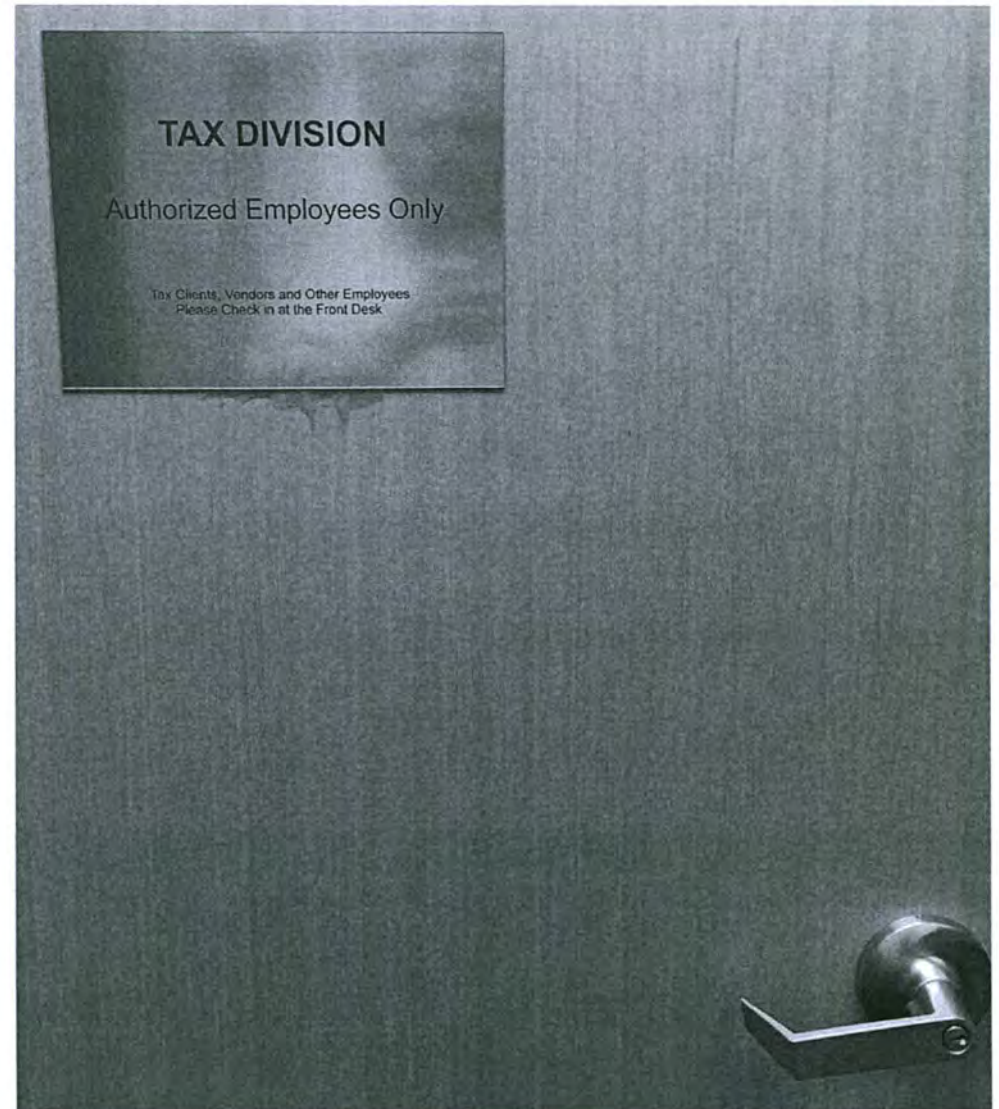
OVERVIEW:

**CONFIDENTIALITY
PROCEDURES IN
STATE AGENCIES**

<TARGET><BILL></BILL><SUBJECT>01-26-15 OVERVIEW
CONFIDENTIALITY PROCEDURES IN STATE
AGENCIES</SUBJECT><COMM>SRES29</COMM></TARGET>

Department of Revenue Employees

- Much of the Department is a secure workspace
- Many employees handle confidential taxpayer information
- All Tax Division employees receive annual confidentiality training



Confidentiality at the Department of Revenue

- One of the primary missions of the Tax Division is to collect, administer, and audit Alaska's tax revenues
- Another mission of the Department is to forecast and report our revenues. This largely involves data collected via the first mission
- We also have data which is offered voluntarily. Industry gives this to us because we keep it confidential as required by law

Relevant Confidentiality Statutes

- **AS 43.05.230** states in part
“It is unlawful for a current or former officer, employee, or agent of the state to divulge the amount of income or the particulars set out or disclosed in a report or return made under this title”
- **AS 40.25.100(a)** states in part
“Information in the possession of the Department of Revenue that discloses the particulars of the business or affairs of a taxpayer or other person is not a matter of public record”
- **AS 43.20.021(a)** Adopts the Internal Revenue Code by reference, including sections regarding confidentiality of taxpayer data

Consequences of Releasing and Not Releasing

- **AS 43.05.230(f)** provides that “a willful violation of...this section... is punishable by a fine of not more than \$5,000, or by imprisonment of not more than two years, or by both.”

However

- **AS 11.56.820(a)(2)** provides that a “person commits the crime of tampering with public records in the second degree if the person . . . knowingly . . . suppresses, conceals, removes, or otherwise impairs the . . . availability of a public record, knowing that the person lacks the authority to do so.” (a Class A Misdemeanor)

Information That Can Be Disclosed

(To certain persons and agencies under certain circumstances)

➤ Exceptions in AS 43.05.230

- Investigations, Appeals, Child Support proceedings
- DNR (tax return data for audit functions);
DEC and ADF&G (fisheries business tax filer info)
- Sharing with Federal or other state governments if they can prove they have appropriate safeguards
- Information in a tobacco, alcohol, mining, business, or fisheries license is public

Information That Can Be Disclosed

- Specific Exceptions that relate to Oil and Gas, but are in the general Department of Revenue statutes, AS 43.05.230
 - The name of each person claiming a credit, and the amount of the credit, for each gas storage facility, is public information (from HB 280, in 2010)
 - The name of each person electing to pay production taxes under the tax as gas (“TAG”) method, and the amount of gas produced for each lease or property, is public information (from SB 138, in 2014)

Information That Can Be Disclosed

- Specific Exceptions to Taxpayer Confidentiality in the Oil and Gas Production Tax Statutes (AS 43.55.890)
 - Data aggregated among three or more producers or explorers to prevent individual identification
 - We routinely aggregate and release large amounts of data in this manner
 - Tax collections, credits, production volumes, tax rates, values, transportation costs, lease expenditures, etc.
- We request and receive a lot of private taxpayer data including their plans and projections. In many cases companies are not required to provide this but they do so because of how we treat the data

THANK YOU

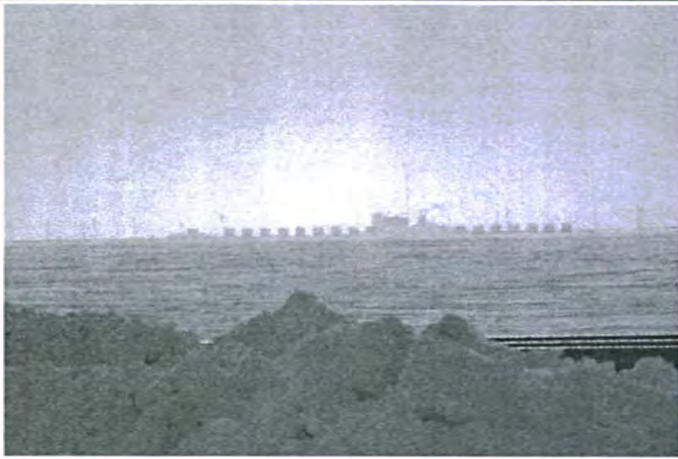
Please find our contact information below:

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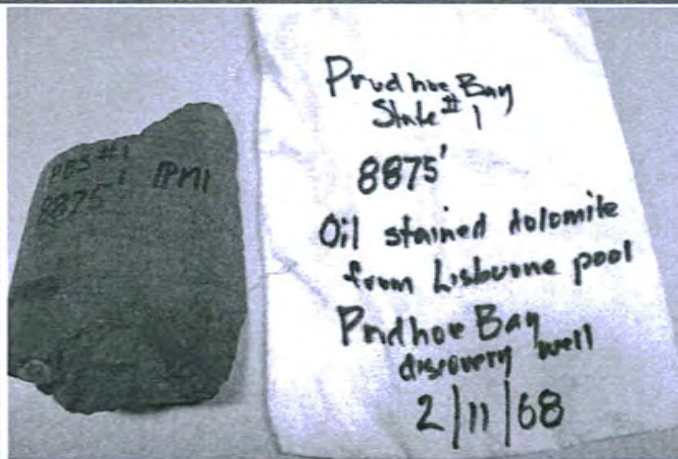
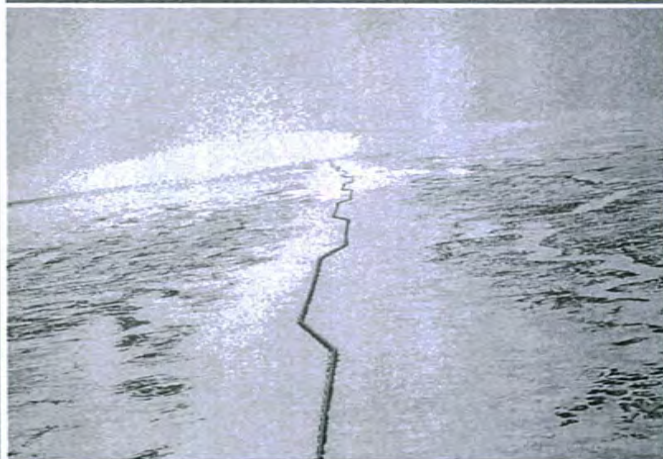


Department of Natural Resources

Division of Oil and Gas – Acting Director Paul Decker

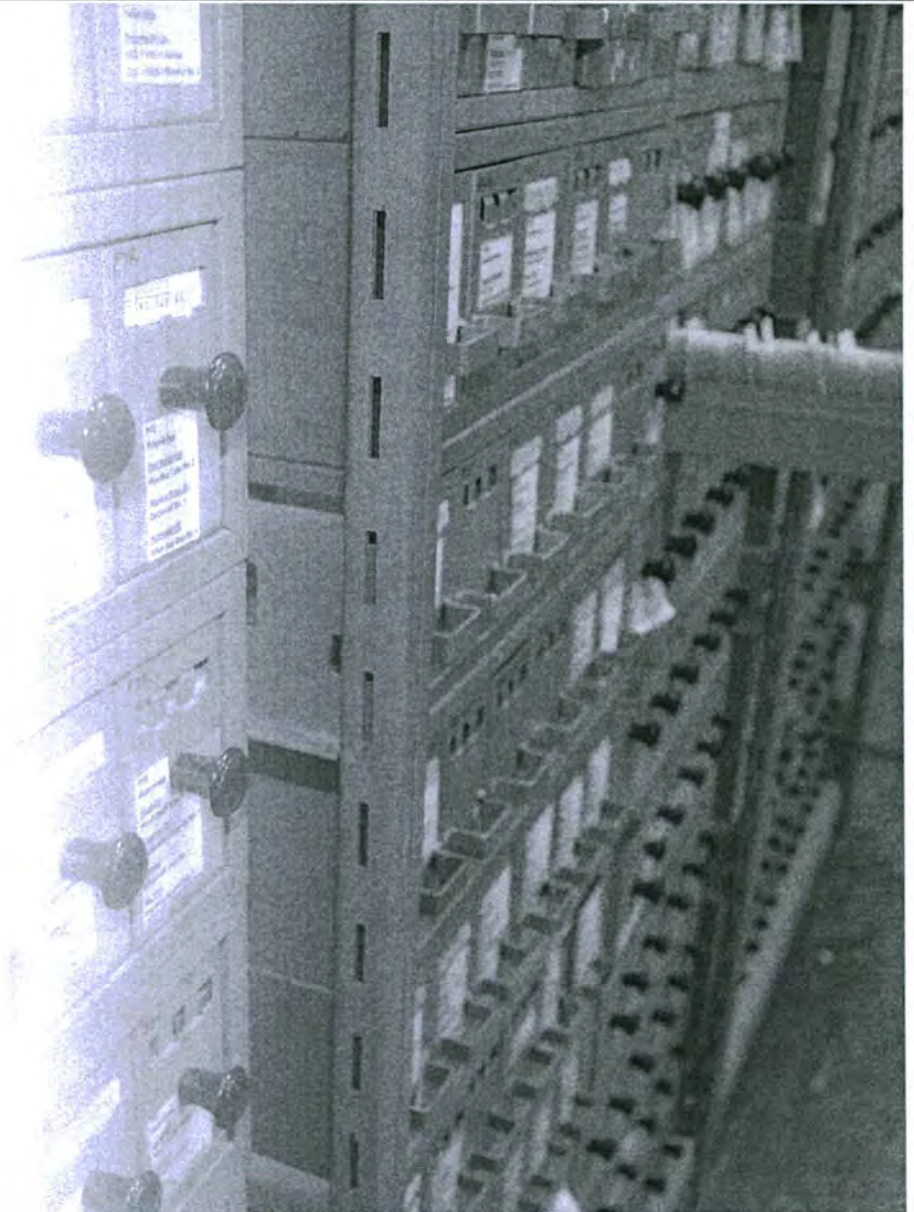
Confidentiality Overview

Senate Resources Committee
January 26, 2015



OVERVIEW

- Most records of the Division are public
- Only limited kinds of information are maintained as confidential – and only when confidentiality is explicitly permitted by law
- Confidentiality is not presumed or taken for granted just because an entity or company claims information is confidential
- DNR implements the balance struck by the legislature – more confidentiality provides more information for the State’s use, while more disclosure promotes transparency



STATUTES AND REGULATIONS

- DIVISION OF OIL AND GAS -

Under the Alaska Public Records Act (AS 40.25), agency records are public documents unless stated otherwise in law

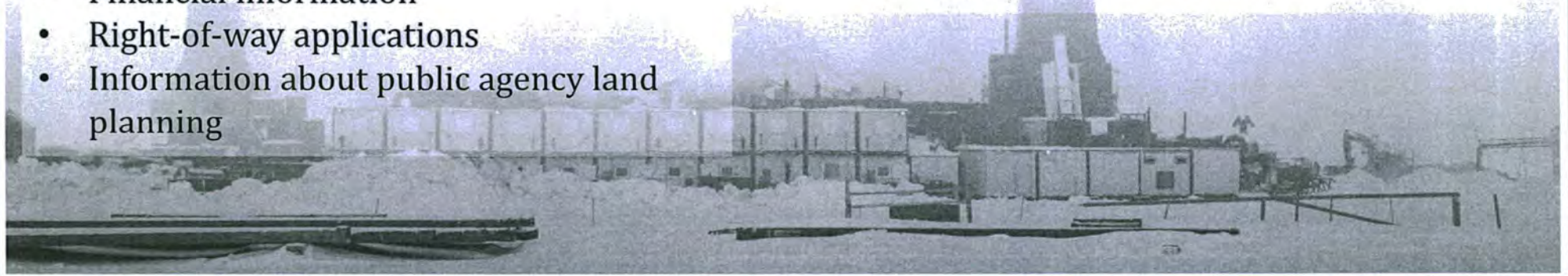
DNR's primary confidentiality statute is AS 38.05.035(a)(8), which permits six categories of information to be kept confidential:

- Names of nominators or applicants for land disposals
- Names of bidders and bid values (which allows for "sealed" bidding)
- Geological, Geophysical, and Engineering (GG&E) data
- Financial information
- Right-of-way applications
- Information about public agency land planning

The Division also receives confidential data from the Department of Revenue under AS 43.05.230 to aid in the adjudication of tax matters related to oil and gas activity

There are additional confidentiality statutes applied by the Division:

- Royalty Audits – AS 38.05.036
- Royalty Board – AS 38.06.060



TYPES OF CONFIDENTIAL DATA

- DIVISION OF OIL AND GAS -

As a practical matter, confidential information primarily comes to the Division as:

- GG&E data
 - Lease and exploration license obligations
 - Miscellaneous Land Use Permit (MLUP) requirements of 11 AAC 96
 - Unit & Participating Area applications
 - Exploration Incentive Credit projects under AS 38.05.180(i)
 - DOR tax credit exploration projects under AS 43.55.023 and .025
- Financial information
 - DR&R
 - Royalty Modification
 - DOR tax filings and supplemental reports
 - Major projects (e.g., gas pipeline projects)
 - Net Profit Share audits
 - Royalty sales contracts and invoices



VALUE OF CONFIDENTIALITY

- DIVISION OF OIL AND GAS -

- Over the decades, confidentiality has allowed the Division to amass and use vast quantities of critical data that would have been impossible for the State to generate
- The Division needs this kind of data to fully evaluate both:
 - the subsurface geology
 - *Area-wide, basin-scale exploration potential*
 - *The attributes of individual producing reservoirs*
 - the commercial environment
 - *The viability and liability of projects*
 - *the full value of the State's share (royalty, net profit share, etc.)*
- In some cases, the ability to maintain confidentiality allows the Division to request and receive more than the legally required data submissions from companies
- Diligently protecting confidentiality is critical to maintaining our ability to continue to obtain the data we rely on to manage our lands effectively



HOW CONFIDENTIAL DATA IS USED

- LIFE CYCLE CASE STUDIES -

Various types of confidential data arrive in the Division from different sources, for various reasons, and are stored and used by different sections

Example #1: Seismic data submitted under DOG permit requirements.

Permanent confidentiality, used exclusively by Resource Evaluation Section

- Data is inventoried to a database – including multiple components and file types
- Copy is made to secure network, original digital media is retained in vault
- Data is loaded, quality checked, and prepared for interpretation software
- Secure data back-up is maintained
- Data is used for interpretation and subsurface mapping, as well as integration and reconciliation with older survey data and well constraints
- These confidential interpretations inform technical recommendations on lease sales, unitization applications, reservoir management decisions, etc. – whether impacting the data owner or other companies
- The data is permanently retained within the Division – and is useful forever



HOW CONFIDENTIAL DATA IS USED

- LIFE CYCLE CASE STUDIES -

Example #2: North Slope exploration well data submitted pursuant to DOR tax credits at AS 43.55.025. Temporary confidentiality (assumes well is not on private land), used by Resource Evaluation Section

- Data is inventoried to a database – including *all* the well data collected, not only what AOGCC regulations require to be submitted
- Copy is made to secure network, original media is retained in vault
- Data is loaded, quality checked, and prepared for interpretation software
- Secure data back-up is maintained
- Data reviewed and interpreted as needed to integrate new information into the existing data and inform technical recommendations on exploration potential, lease sales, unitization, etc.
- Data set prepared for public release by DNR (including data types that may not become available through AOGCC release)
- Release is approximately two years after completion, abandonment, or suspension of well, and the data is then available to the Division and the public in perpetuity



HOW CONFIDENTIAL DATA IS USED

- LIFE CYCLE CASE STUDIES -

Example #3: Financial data obtained for royalty audits under AS

38.05.036. Permanent confidentiality, used primarily by Royalty Audit Section

- Data is obtained from lessees during the audit or before audit commences.
- Copy to secure network and backup is maintained.
- Data is then used to:
 - Analyze lessee's confidential sales contracts, invoices and other information to verify the field prices received for operations and activities
 - Analyze other producers' confidential information in context
 - Compare lessee's field prices to other producers' field prices to determine "higher of" values for audit claims
- The data is retained indefinitely within the Division, and may be useful in future audits or needed for resolving appeals.



HOW CONFIDENTIAL DATA IS USED

- LIFE CYCLE CASE STUDIES -

Example #4: Financial data submitted in support of a royalty modification application. Permanent confidentiality, used primarily by the Commercial Section

- Digital data is secured in a network folder; hardcopy originals filed in vault
- Staff utilize both paper and digital copies of the information
- Data is used to construct economic models of potential projects that attempt to identify resource and economic risks
- Data and the models are used to evaluate the application, prepare preliminary findings, respond to public comments as necessary, and then issue the final findings on the application.
- Permanent data retention within the Division – useful forever.



CONCLUSION

- Only limited kinds of information are maintained as confidential – and they must be explicitly identified and approved in law
- Confidentiality allows the State to benefit from utilizing data without putting the data owners at a disadvantage relative to competitors.
- Most confidential data within DOG is either GG&E or financial information
- Different kinds of data are governed by different laws, and the life cycle, handling, and use of data depends on its type and legal restrictions
- Ability to maintain data confidentiality enables the Division to understand the subsurface resources and commercial landscape needed to make the best possible resource management decisions.



CONFIDENTIALITY IN LNG PROJECTS: ISSUES FOR ALASKA

Presentation to Senate Resources Committee
Juneau, Alaska › Monday, January 26, 2015

Janak Mayer, Partner › janak.mayer@enalytica.com
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THE COMMERCIAL CASE FOR CONFIDENTIALITY

Difference between confidentiality during negotiations and after an agreement has been reached

After agreement, much of the need for confidentiality disappears and agreements can be released

Confidentiality mostly to protect negotiating position (including the state's), not about keeping secrets

Even so, not all parties will want all the details to be made public

Negotiating in open is like playing poker with your cards showing

Key questions for Alaska

- . How much information do you need to pull the trigger?
- . What are you willing to give up in order to have more transparency?
- . How will the process work?

WHAT DO WE KNOW ABOUT LNG PROJECTS AT FID?

Technical	Lots of info—number of wells, route of pipelines, technical specifications, footprint
Impacts	Lots of info on how project affects the local environment
Cost	Usually a total and maybe key aggregates (\$ for wells, pipelines, LNG plant, etc.)
Finance	Basic structure, lenders (commercial or official), tenor (length), rarely price
Commercial	Number of contracts and counter-parties (volumes, duration, and maybe terms of sales like FOB/DES, destination flexibility); parties might report indexation basis (e.g. oil-linked), and more rarely other terms (e.g. S-curves); rarely mention of contract value (e.g. “\$20 billion over 20 years”), but without assumptions or sensitivity; almost never: actual price formula.

How much information do you need to pull the trigger?

LNG projects generate loads of information—having and processing all of it is impractical. Debate in Norwegian parliament for Snøhvit LNG project could offer pathway: record shows no mention of contract prices, but mentions expected return for the project, expected revenues (discounted to the present) and basic sensitivity numbers (higher/lower prices, delays, etc.).

What are you willing to give up in order to have more transparency?

To our knowledge, only one LNG project has moved forward with most agreements available to public (Cheniere Energy's Sabine Pass); such approach boasts simplicity but it limits flexibility; it is easier to do in a simple negotiation over one contract (e.g. LNG sales) but harder when juggling multiple goals.

How will the process work?

SB 138: administration negotiates with input from the Legislature in both public hearings and executive session; and administration brings back agreement to Legislature for ratification. That plan seems superior to either full disclosure at all times or full confidentiality (SGDA experience).

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Confidentiality Agreements and Alaska Government

Senate Resources Committee – Twenty-Ninth Legislature – January 26, 2015

Chad Hutchison – Office of Senator Coghill

Senate Resource Committee Handout - 1/26/15

Confidentiality Agreements

- Basics
 - Who/What/When/Where/Why
- Brief History of Agreements in Alaska

What is a Confidentiality Agreement?



- Agreement between the parties (and in some cases their agents).
- Not to be disclosed to the public or any third party (information deemed confidential of imperative for the success of the transaction).
- Commonly found in certain business transactions.
- Proprietary information may be exchanged between the parties.
 - Examples include: Confidential data, research, books, records, trade secrets regarding the business, operations, strategic materials, etc.
- In some cases, to see if the transaction can go forward.

What else may also be included?



- ▶ Parties' investigation of assets (including on locations).
- ▶ May involve "return clauses."
 - For example: If deal doesn't go through, usually the confidential or proprietary information is returned to the other party as soon as practicable and upon request of the party.
- ▶ May involve discussions on future transactions.
- ▶ May involve provisions related to press releases or public announcements without prior approval of all parties.

Anything else?



- Some include agreements not to assign rights or obligations to another party.
- Some include irreparable injury clauses, including recovery steps, injunctive relief, etc.
- If there is a dispute – there may be provisions that may include alternative dispute resolution or outlines the court of relevant jurisdiction.

Why is this important?

- Recognition that some transactions rely on a voluntary exchange and assessment of information. In some cases, in order to have any effect, entities will only enter those agreements if they have protection.
- For example: In the oil industry, there may be disclosure of transportation costs or valuation practices. That may be valuable for competitors.

Confidentiality and the State of Alaska



- Start here: AS 40.25.110(a) – “unless specifically provided otherwise, public records of all public agencies are open to inspection.”
- However, the right to public access is balanced with:
 - The privacy rights in the state constitution; and
 - The need for government officials to engage in policy deliberation without undue interference.
- As a result, AS 40.25.120 includes a number of exceptions to public records requirements.
- In fact, specific types of records are confidential in at least 34 of Alaska’s 47 statute titles.

Seven (7) Statutes Allow or Require Executive and/or Legislative Branch Officers and their Employees to Enter into “Confidentiality Agreements.”

- AS 31.25.090(f-g) – Alaska Gasline Development Corp (AGDC)
- AS 37.10.220(b)(4) – Alaska Retirement Management Board
- AS 38.05.020 (b)(12) – Department of Natural Resources (DNR)
- AS 40.25.100 – Department of Revenue (DOR)
- AS 40.25.120 (a)(13-14) – AGDC
- AS 43.05.095(c) – DOR
- AS 43.98.060 – DNR/DOR Oil and Gas Competitiveness Review Board

Two Additional Statute Sections Provide for Confidentiality of Information Related to North Slope Gasline Construction.

- AS 43.82.310 – DNR/DOR Stranded Gas Development Act
- AS 43.90.160 – DOR Alaska Gasline Inducement Act

Historically Speaking...

- Applications received from potential private-sector participants in Governor Palin's Alaska Gasline Inducement Act were strictly confidential (AS 43.90.160).
- In 1999, legislators were required to sign confidentiality agreements prior to receiving briefing from the Knowles Administration on the BP-ARCO merger.
 - Why?
 - Contained proprietary corporate information.
 - Contained state and federal tax issues.
- In 2005, state officials/employees were required to sign confidentiality agreements for access to oil and gas market reports by Wood MacKenzie, Ltd.

Sampling of Responses from Executive Branch Departments – Summary of Confidentiality Agreements

- DNR includes in the appendices to its "request for proposal" procedures, a "nondisclosure and confidentiality" section that forbids contractors from disseminating confidential information. It delineates the types of information covered.
- DHSS requires business associates that receive protected health information to sign an agreement that delineates how information is handled. Included in the agreement are numerous provisions outlining confidentiality requirements.
- DPS and Council on Domestic Violence and Sexual Assault require "assurances" from grant recipients among which is a requirement that the grantee will protect "program participant confidentiality and maintain policies and procedures to guarantee program participant confidentiality."

Questions?



**Written Testimony of Commissioner Cathy Foerster,
Alaska Oil and Gas Conservation Commission**

The Alaska Oil and Gas Conservation Commission (AOGCC) receives a large volume of information from operators. Most of this information is stored in the AOGCC's non-confidential well file system and also posted on the AOGCC website, both of which are open and available to the public. However, the AOGCC frequently receives information that it is required by statute to keep confidential.

The most common example of data that the AOGCC is required to keep confidential relates to exploratory wells. The statutes are very clear on that data. They say that required reports and information that relate to an exploratory or stratigraphic test well and those portions of an application for a permit to drill such a well that contain proprietary information shall be kept confidential for 24 months unless the owner of the well gives written permission to release the data and information earlier. The exact wording can be found at AS 31.05.35(c).

Another example is data that an operator is not required by statute to provide but that they voluntarily provide. Again the statutes are very clear. They say that information not required by statute but voluntarily filed with the commission shall be kept confidential if the person filing the information so requests. The exact wording can be found at AS 31.05.035(d).

So what sorts of information would an operator volunteer and want to hold confidential? The answer to this question is not spelled out in the statutes but it is still pretty clear. An operator often wants to share interpretive or company-proprietary information so that the commission can understand the operator's reasoning behind a request or action. Examples are a structure or net pay map or a structural cross-section. Another example is a reservoir simulation model – its construction, its input data and assumptions, and its output. All of these examples involve technical interpretation and the use of a company's proprietary tools and technology.

Now let's look at a very specific instance where the AOGCC has used AS 31.05.035(d) to treat as confidential voluntarily provided information – i.e., data and information neither required nor requested by the AOGCC. Since both Prudhoe Bay and Point Thomson are oil fields, no gas may be removed from either without an offtake allowable determination by the AOGCC. This requirement is in place to ensure that waste does not occur because, in general, removing gas from an oil field before all the oil has been produced results in loss of some of the oil. For AOGCC to make the offtake allowable determination the operator of the field must demonstrate that hydrocarbon losses will not occur. This demonstration typically involves complicated geologic and engineering analysis, and for both Prudhoe Bay and Point Thomson, that will definitely be the case.

In 2005, the AOGCC began preparing for that inevitable "ask" by gathering that technical and analytical information, all of which the operators hold as proprietary and confidential. Thus as part of the process, AOGCC technical staff signed confidentiality agreements with both the Prudhoe Bay and the Point Thomson operators.

Obviously, confidentiality does not apply to information submitted as part of a public process. That said, AOGCC regulations regarding hearings clarify that, if disclosure of otherwise confidential information is required for the commission to make a decision, the commission will protect that data's confidentiality by viewing it in-camera and redacting it from the public record.